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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: LIN 02 184 56304 Office: NEBRASKA SERVICE CENTER Date:

JAN 10 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:

*identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy*

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 CFR 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a porcelain studio established by the beneficiary and one other artist with whom the beneficiary has been collaborating. The beneficiary is a porcelain artist. The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), in order to employ her indefinitely at an undetermined salary.

The director denied the petition finding that the petitioner had failed to establish that the beneficiary satisfies the standards for classification as an alien with extraordinary ability in the arts.

On appeal, counsel for the petitioner asserted that the director failed to take into account all of the evidence submitted by the petitioner, and that the director discounted the evidence due to its perceived shortcomings.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The beneficiary is a native and citizen of Latvia. She graduated from the Latvian Art School in 1987 and the Latvian Academy of Art in 1992. The beneficiary is well known in Latvia and her work has been exhibited in Denmark, Estonia, France, Germany, Hungary, Korea, Lithuania, and the United States.

At issue is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts within the meaning of this provision.

8 CFR 214.2(o)(3)(ii) defines, in pertinent part:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill

and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

8 CFR 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability in the field of arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed and will perform services as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a

form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

Here, there is no evidence that the beneficiary has received an award equivalent to those listed at 8 CFR 214.2(o)(3)(iv)(A) above. Nonetheless, the beneficiary has won a number of awards that demonstrate national and international recognition for her achievements. She received a "diploma of honor and honorable mention" at the World Ceramic Biennale 2001 Korea International Competition. The National Latvian National Opera selected the beneficiary in a competition to create commemorative prizes for their events. In 1998, the beneficiary won a competition and was commissioned by the Latvian Ministry of Foreign Affairs to design and create gifts for all prime minister participants of the Summit of Leaders of Governments of Baltic Sea countries.

The petitioner established that the beneficiary has achieved national and international recognition for achievements evidenced by critical reviews and other published materials about the beneficiary in major newspapers and other publications. The president of *JSC Diena*, publisher of the largest national newspaper in Latvia, wrote the Service that the newspaper *Diena* had written several reviews about the beneficiary's artwork and exhibitions over the years and that the beneficiary is regarded as a "porcelain artist of very high national acclaim." The beneficiary has been included in major exhibitions, catalogues and books.

The beneficiary has received significant recognition for achievements from organizations, government agencies and other recognized experts in the field. The Director of the Riga Porcelain Museum wrote that the beneficiary is a popular and celebrated artist of national acclaim. The Director of the Department of Cultural Policy at the Latvian Ministry of Culture wrote a testimonial on behalf of the beneficiary acknowledging that the beneficiary is a "young Latvian ceramist with brilliant talent who became known as a new voice in contemporary Latvian ceramics." The director wrote that the beneficiary was chosen by the Latvian government to represent Latvian applied arts in the

Art Letton Contemporarian: Latvian Contemporary Art exhibition held in Grand Salle, Strasbourg in 1997 and the *Maison du Danemark* in Paris, France in 1998. A member of the advisory board to the National Council on Education for the Ceramic Arts wrote that the beneficiary was selected in a highly competitive process to exhibit her work at an international exposition in Korea. The director of the Danish Cultural Institute located in Riga, Latvia, wrote that he has known of the beneficiary's work for many years because of the beneficiary's participation in national and international exhibitions.

The petitioner provided evidence that the beneficiary has a record of critically acclaimed successes by virtue of her occupational achievements reported in trade journals, major newspapers and other publications.

In review, the record shows that the beneficiary meets at least three of the criteria at 8 CFR 214.2(o)(3)(iv)(B). Her recognition is "substantially above that ordinarily encountered" in the field of fine arts. Nonetheless, the appeal will be dismissed because the petitioner failed to provide required evidence. 8 CFR 214.2(o)(2)(ii)(C) states that petitions for O aliens shall be accompanied by: "An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities." In the instant case, the petitioner indicated that it intended to hire the beneficiary "indefinitely." The O-1 visa is a non-immigrant visa. The petitioner's express intention to hire the beneficiary on an indefinite basis is inconsistent with the nature of a non-immigrant visa. More significantly, the petitioner failed to include with the I-129 petition beginning and ending dates for the events or activities that the beneficiary intends to perform in the United States.

Beyond the decision of the director, the petitioner failed to provide the Service with a consultation as required by 8 CFR 214.2(o)(5). Since the appeal will be dismissed for the reasons stated above, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.